

Remarks

This amendment is made in response to the Office Action dated April 19, 2005. Claims 1-21 are pending, with claims 19-21 having now been withdrawn from consideration. Claims 1 and 5-18 have been amended. With regard to claims 5-14 and 16-18, these claims have been amended only to renumber them, as the original set of claims omitted claim 4.

Election/Restriction

In response to the election/restriction set forth in the Office Action, applicants confirm the election to prosecute claims 1-18 of group I, and further species 2 set forth in Figure 2a. Applicants believe that each of pending claims 1-18 (now renumbered as claims 1-17) read on species 2 (and that at least independent claims 1 and 14 read on both species 1 and 2).

Objections to the Drawings

The Examiner has objected to the drawings for failing to comply with 37 C.F.R. § 1.84(p)(4) and 1.84(p)(5). In addressing these objections, applicants have amended the specification at page 8, line 12 to recite reference characters "140, 141" rather than reference characters "118, 120" when referring to the "pair of electrical wires." Thus, the specification now correctly only uses reference character "118" to designate a deployment device and reference character "120" to designate a protrusion. Applicants have further amended Figure 3 to include newly recited reference characters "140" and "141." Applicants have also amended Figure 1a to replace reference character "125" with reference character "120" so as to properly identify the protrusion. These Replacement Sheets and Annotated Sheets are attached hereto.

In accordance with 37 C.F.R. 1.121(d), applicants have submitted replacement sheets for Figures 1a and 3 which are labeled as such, and have submitted corresponding marked up copies of the replacement sheets having annotations indicating the changes made and also marked as such.

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Claim Rejections

The Examiner has rejected claims 1-6 and 13-16 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,976,129 to Desai. Claim 7 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Desai in view of U.S. Patent No. 4,493,320 to Treat, and claims 8-12 and 17-18 have been rejected under § 103(a) over Desai in view of U.S. Patent No. 5,782,839 to Hart.

With regard to the Examiner's rejections under § 102(b), applicants respectfully disagree. Desai discloses an electrode apparatus capable of being used in endoscopic procedure that may include retractable electrodes. These electrodes, however, maintain their configuration relative to the "introducer" in both the retracted and unretracted states. For example, the looped configurations of the electrodes shown in Figs. 6 remain looped in the deployed and undeployed configurations (see Figs. 38-40). Similarly, electrodes 350, 352 (see e.g., Fig. 26A) maintain a substantially longitudinal configuration relative to the inserter in both the deployed and undeployed configurations. To the contrary, the conductive wire of the presently claimed invention has a substantially longitudinal configuration in the undeployed position and a substantially looped configuration in the deployed position. The present invention differs further from the cited art in that the conductive wire can be cinched (to transect an organ surrounded by the looped conductive wire) substantially without moving the introducer or the distal end of the conductive wire. Thus, the present invention provides an electrosurgical device having a conductive wire that can be looped around a larger organ, and subsequently cinched without further movement of the organ. None of the devices disclosed by the cited references are suitable for such a use.

More particularly, amended independent claims 1 and 14 now more clearly set forth these distinguishing features. Independent claim 1 recites an electrosurgical instrument having a conductive wire that is

movable between an undeployed position wherein the conductive wire is substantially positioned longitudinally along the length of and within the channel **and wherein a distal end thereof is not secured to the introducer by the capture element**, and a deployed position wherein the conductive wire extends outwardly from the distal end of the channel, and wherein **its distal end is secured to the**

introducer by the capture element to thereby form a substantially looped configuration,

and a deployment device that, when the conductive wire is in the deployed position,
is movable toward the first position to thereby **cinch** the
conductive wire substantially without moving the introducer
or the distal end of the conductive wire.

Amended independent claim 14 includes similar limitations. As Desai fails to disclose or suggest any of these recited features, applicants respectfully submit that Desai fails to anticipate claims 1 and 14, or any of claims 2-13 and 15-17 which depend therefrom.

Finally, neither Treat nor Hale, either alone or in combination with Desai, teach or suggest the elements of claims 1 and 14 that are discussed and recited above. Thus, applicants believe that all pending claims are patentable over the cited references. Reconsideration and allowance is respectfully requested.

In view of the foregoing, applicants believe that each of claims 1-17 are in condition for allowance, which is respectfully requested.

Applicants believe that no fee is due in connection with this response. The Commissioner is hereby authorized, however, to charge any additional fees that may be required to Account No. 10-0750/GYN-5009/MJS. This Authorization is being submitted in triplicate.

Respectfully submitted,

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TITLE: ELECTROSURGICAL INSTRUMENT AND...
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Annotated Sheet

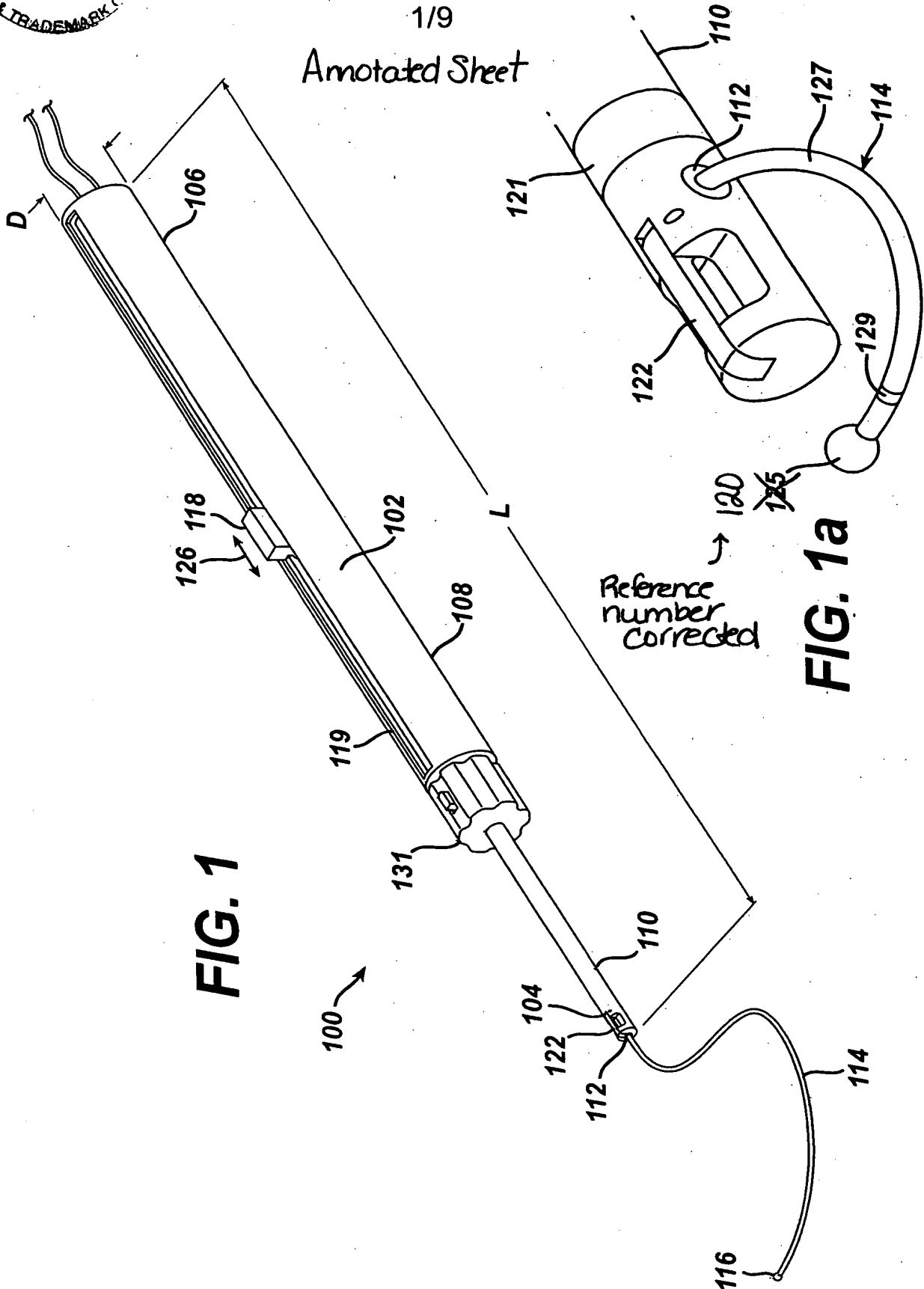


FIG. 1

FIG. 1a

Reference
numbers added

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Annotated Sheet

